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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,025	11/12/2003	Elmer G. Musser JR.	1073.002	6195
22186 7590 01/23/2009 MENDELSON AND ASSOCIATES, P.C. 1500 JOHN F. KENNEDY BLVD., SUITE 405 PHILADELPHIA, PA 19102				
EXAMINER				
RAMAN, USHA				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/706,025

Applicant(s)

MUSSEY, ELMER G.

Examiner

USHA RAMAN

Art Unit

2424

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10-31-08.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-7, 9-12 and 16-32 is/are rejected.
7) ☒ Claim(s) 8 and 13-15 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

Response to Arguments

1. Applicant's arguments with respect to claims 1, 6, 7, 11, 12, and 32 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-16 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-5, 9-12, 16-20, 22-25, 27-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat. 6,389,129) in view of Copley et al. (US PG Pub. 2003/0061305).

Regarding claims 1, 18, 23 and 30, Zetts teaches a method of playlist chasing comprising:

receiving a reference play list defining a plurality of attributes for each of one or more program segments (col. 5, lines 8-14), the attributes comprising an on-air time (col. 5, lines 14-22), and a duration for each program segment (col. 5, lines 14-22);

comparing at least one on-air time in the reference playlist to a specified reference time; identifying, based on the comparison, at least one program segment in the reference playlist that is active at the specified reference time; and adjusting, based on the at least one identified active program segment, one or more attributes for one or more program segments in the reference playlist (col. 11, lines 12-18; col. 12, line 43-col. 13, line 5).

Zetts does not disclose the step of adjusting based on the identified active program, the one or more attributes in the reference play list to create a new playlist.

In an analogous art, Copley discloses the method creating a new play list in the event of a failure [0084], wherein the new playlist references the media files at a back up server [0033]. Copley further discloses that upon executing the new playlist, playback of the media from the back up server is resumed at a point in timeline at which the failure occurred.

It would have been obvious to one of ordinary skill in the art to incorporate the teachings of Copley into the system of Zetts thereby creating a new playlist that is mirrored from a reference play list and further modify the system to include an offset

attribute in the play list so that the clip can be resumed at a point in timeline at which the failure occurred, thereby providing seamless playback at the client. See also Zetts: col. 2, lines 38-43 and col. 5, lines 14-22.

Regarding claim 2, Zetts teaches wherein: the reference playlist corresponds to a playlist currently being executed by a first subsystem that sources an on-air feed (col. 4, lines 34-36—primary server plays out video clips directly to air); and the specified reference time is based on the current time of day (col. 12, line 43-col. 13, line 5—“local time”).

Regarding claims 3, 19 and 24, Zetts teaches executing the new playlist on a second subsystem that provides failure protection for the first subsystem (col. 4, lines 34-36—secondary server).

Regarding claims 4, and 5, Copley discloses an internet based streaming subsystem that is capable of hosting a plurality of active users [0127]. While silent on specifically multicasting to the plurality of users, examiner takes Official notice that multicasting streams were well known in the art at the time of the invention. Accordingly, it would have been obvious to multicast certain events such as live feeds to a plurality of users thereby streaming the live content to plurality of users on the internet.

Regarding claims 9, 20 and 25, Zetts teaches selecting the one or more program segments in the reference playlist to adjust, taking into account a queuing delay associated with a source of each selected program segment (col. 12, lines 56-64—network delay and queuing delay).

Regarding claim 10, Zetts teaches wherein at least one active program segment is not selected to be adjusted based on the queuing delay of the source associated with the active program segment (col. 12, lines 56-64).

With regards to claims 11, and 12, Zetts stores multiple play lists (200 and 210). Copley further discloses that a selection criteria used for the play list generator comprises a ruleset resolver [0040], [0041]. Copley further discloses that depending on time of day, certain elements (e.g. promotional material) that would be included in play list can vary. While Copley is silent on the step of selecting from a plurality of playlist, examiner takes official notice that it was well known in the art to maintain alternative play lists/line ups for different times of days or comprising different promotional material. Accordingly it would have been obvious to store a plurality of playlist configurations in the server and use the ruleset resolver to select a play list according to the rules specified therein.

Regarding claims 16, 22 and 27, Zetts teaches wherein two or more program segments are from different sources (Fig. 2—videos from sources, such as ABC, FORD, McDonald's, etc., are stored in video archive 140 using hard disk storage and/or a tape library).

Regarding claim 17, Zetts teaches wherein at least one of the one or more program segments is sourced by a video server (Fig. 1—100).

Regarding claim 28, Zetts teaches wherein at least one content sourcing subsystem includes: an automation server adapted to execute a playlist (Fig. 1—100); a plurality of content sources (Fig. 2—videos from sources, such as ABC,

FORD, McDonald's, etc., are stored in video archive 140 using hard disk storage and/or a tape library); and a content router coupled to the outputs of the content sources (Fig. 1—165), wherein: the automation server is adapted to communicate information derived from the playlist to one or more of the content sources in the plurality of content sources (col. 4, lines 47-50); and the content router is adapted to select an output of one of the plurality of content sources and output a routed output upon which the subsystem stream of content is based (col. 4, lines 54-56).

Regarding claim 29, Zetts teaches a network management station adapted to monitor the status of the subsystems and, in the event of a failure of a subsystem, report this failure to the automated playlist chaser (col. 4, lines 33-45; col. 5, lines 1-7).

Regarding claim 31, Zetts in view of Lewin teaches, wherein the adjusting step comprises adjusting, based on the at least one identified active program segment, at least one of the on-air time, the start-of message, and the duration attributes for the one or more program segments in the reference playlist to create the new playlist (col. 12, line 43—col. 13, line 5—play offset of the target video is adjusted to create the new playlist in the secondary video server) and Lewin (see [0042]).

4. Claims 6, 21, and 26, are rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat. 6,389,129) in view of Copley et al. (US PG Pub. 2003/0061305)

as applied to claim 1 above, and further in view of Kenner et al. (US Pat. 5,956,716) and Rowe et al. (US PG Pub. 2005/0060759).

With regards to claim 6, the system is silent on the reference playlist intended for a first on-air feed that is intended for viewing in at least a first zone and a specified reference is based on the current time of day in a second time zone that is different than the first time zone.

In an analogous art, Kenner discloses distributed server architecture dispersed about geographically different areas, wherein server from other alternate sites can function as a "back up" and service user request when a server intended for user's geographic for the user is out of service. See column 5 lines 42-43 and lines 53-55. Accordingly Kenner disclose a first subsystem sourcing a first geographical area and a second subsystem sourcing a second geographical area. Rowe further discloses multiple on air feeds intended for different geographical areas, including different time zones [0080].

Therefore it would have been obvious to further modify the art in view of Kenner and Rowe by employing distributed server architecture dispersed about different geographical areas, each server sourcing a feed intended for its geographical area, wherein when a server in a second time zone fails, a reference playlist being executed by a first subsystem that sources a first on air feed intended for viewing in at least first time zone can be used to establish an on air feed for a second time zone based on time of day.

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zetts (US Pat. 6,389,129) in view of Copley et al. (US PG Pub. 2003/0061305), Kenner et al. (US Pat. 5,956,716) and Rowe et al. (US PG Pub. 2005/0060759) as applied to claim 6 above and further in view of Hindricks (US 2001/0025377).

With further regards to claim 7, the system is silent on wherein the second on-air feed is substantially a time-delayed version of the first on-air feed. Hindricks is however evidence of a second on air feed intended for viewing at a second time zone being a substantially time delayed version of the first on air feed. One of ordinary skill in the art would recognize that the first and second on feed sequence are substantially similar when the second is just a time delayed version of the first. Accordingly, the play lists representing each would serve as an effective back up for the other. All the claimed limitations were known in the art at the time of the invention and one of ordinary skill in the art could have combined them with known techniques yielding predictable results.

Allowable Subject Matter

6. Claims 8, 13, 14, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The following is a statement of reasons for the indication of allowable subject matter:

Regarding claim 8, Zetts and Hinderks teach executing the reference playlist on a second subsystem that sources an intermediate feed that is substantially synchronous with the first on-air feed that is sourced by the first subsystem; and

delaying the intermediate feed using a delay unit to produce a second on-air feed that is intended for viewing in at least the second time zone, such that the difference between the start of a given program segment in the first on-air feed and the start of the given program segment in the second on-air feed is equal to the time of day difference between the first and second time zones, however, the prior art of record fails to teach or reasonably suggest upon detecting a failure in the delay unit: the delay unit is bypassed such that the intermediate feed becomes the second on-air feed; and the new playlist is loaded into and executed by the second subsystem as recited in the claims.

Regarding claims 13, 14 and 15, the prior art of record fails to teach or reasonable suggest the combination of claim 1 and initializing a first variable based on the reference time plus a processing time; initializing a second variable to the value of the first variable; determining a current program segment from the reference playlist by comparing the value of the second variable with timeslots for program segments in the reference playlist; determining media type and corresponding queuing delay for the source of the current program segment; updating the value of the second variable to be equal to the value of first variable plus the queuing delay, and checking to see if the updated value of the second variable is within the timeslot for the current program segment, and, if it is not, repeating the steps (c)-(e) until the updated value of the second variable is within the timeslot for the current program segment as recited in the claims.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to USHA RAMAN whose telephone number is (571)272-7380. The examiner can normally be reached on Tue-Fri: 8am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Kelley can be reached on (571) 272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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